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to support the view that workmen may peaceably stop work singly or in a body. There is no discussion here of the motives or purposes for which the right to strike may be employed. The anti-strike clause is declared to be "unreasonable and void, as against public policy."

While admitting that an ordinance making picketing illegal is not necessarily invalid, the court holds that there is not enough logical connection between the acts of picketing described in the ordinance and the criminal conspiracy forbidden to warrant making those acts *prima facie* evidence of such conspiracy. Accordingly the anti-picketing clause is invalid.

In the case of Ex parte Stout, an elaborate and sweeping anti-picketing ordinance of El Paso, Texas, was attacked as unconstitutional, as an interference with freedom of speech and a denial of due process of law under the fourteenth amendment. The defendant had merely walked up and down in front of a restaurant bearing a sign denouncing the restaurant as "unfair." The court indicates that the right of the city to control the use of its streets serves as the basis for many limitations upon free speech which would otherwise be unconstitutional. The act of picketing has been held by numerous authorities to be an unjustifiable interference with the business of others inasmuch as its inevitable tendency is to coerce and intimidate prospective patrons of the picketed establishment. Forbidding it is therefore a proper exercise of the police power of the municipality.

War Problems. *Conscription Act—Constitutionality.* Arver v. United States (U. S. Supreme Court, January 7, 1918, 38 Sup. Ct. 159); United States v. Stephens (U. S. District Court, November 13, 1917, 245 Fed. 956); Angelus v. Sullivan (U. S. Circuit Court of Appeals, October 22, 1917, 246 Fed. 54). The decision of the United States Supreme Court upholding the constitutionality of the conscription, while treating with some care a few of the arguments urged against the law, deals with scant courtesy with most of them. The opinion may be summarized roughly as follows: First, the admitted power of Congress to raise armies carries with it the power to compel men to serve in such armies. Second, it is no argument against the law that its effect is to make state citizenship subordinate to federal citizenship by rendering it impossible for men to give their service to the state. Such subordination of state citizenship was within the intention of the Constitution from the first and was reaffirmed by the fourteenth amendment. Third, that compulsory military service is not a gross violation of the inherent principles

of a free government is shown by its almost universal acceptance at the present time, by its long history, and by much reputable judicial authority. Fourth, the clauses in the Constitution regarding the state militia and the power of Congress over those bodies are entirely separate from the clauses relating to the power of Congress to raise and equip armies and the limitations placed upon the former do not in any way affect the latter. Fifth, no merit is found in the attacks made upon the administrative features of the law; it does not improperly delegate federal authority to the states, nor does it delegate legislative or judicial power to administrative officials. Finally, the claims that the conscription act, in exempting from its operation certain religious sects as well as the clergy and theological students, creates an unconstitutional establishment of religion, and the contention that it violates the thirteenth amendment by imposing involuntary servitude are passed over without argument as being beneath the dignity of an answer.

The opinion in Angelus v. Sullivan adds nothing of importance to the discussion of the constitutionality of the conscription act; but in United States v. Stephens somewhat careful consideration is given to the contention that the act creates an establishment of religion, and also to the argument that the members of the national army cannot be sent outside the United States for military service. Needless to say both cases uphold the act.

Conscription Act—Custody of Drafted Man Serving Prison Sentence. Ex parte Calloway (U. S. District Court, November 13, 1917, 246 Fed. 263). A writ of habeas corpus is denied in this case to a man who was held in prison by the state authorities for an offense committed subsequent to his enrollment in the draft. Upon being ordered to report for military service he sought release from prison in order to comply. It was held that he was legally kept in prison and could enter the national army only at the expiration of his term.

Conscription Act—Release From Enlistment in Regular Army as Ground for Exemption. Ex parte Cohen (U. S. District Court, October 17, 1917, 245 Fed. 667). A man is not exempt from the draft because he previously purchased his release from the regular army in which he had voluntarily enlisted. The fact that he was honorably discharged from service for a money consideration cannot be regarded as an implied agreement that he should be exempt from the draft, since Congress alone has authority to determine the grounds upon which exemption from the draft may be claimed.

Conscription Act—Status of Aliens—Jurisdiction of Courts to Review. Angelus v. Sullivan (U. S. Circuit Court of Appeals, October 22, 1917, 246 Fed. 54, 62); Ex parte Hutflis (U. S. District Court, October 19, 1917, 245 Fed. 798); United States v. Finley (U. S. District Court, November 3, 1917, 245 Fed. 871); Ex parte Beck (U. S. District Court, September 29, 1917, 245 Fed. 967). In the first of these cases the court declares that, while an alien is not subject to the draft, the decision of the draft exemption boards upon the question of fact as to whether or not a man is an alien is final, except in cases where the board has not given the person involved a fair chance to be heard and present evidence. No such procedural defects were found in the action of the board in the case before the court.

The lower federal courts are not in agreement upon the question whether persons are automatically excluded from the draft when it is shown that they are aliens, no matter how the fact of alienage may have been established, or whether alienage merely forms a possible basis for exemption if properly pleaded in accordance with the regulations provided by law. In the Beck case the court takes the former view that an alien is *ipso facto* exempt, and that the exemption boards must exclude aliens no matter how they find out the fact of their alienage. In this case the fact of alienage was not denied, but the claim for exemption on that ground was not made within the period specified by the law. The court took the view that the board had no power over an alien and must exclude him from the draft even though he might wish to serve and, *a fortiori*, they should exclude the alien who wished to be exempted but who had in good faith failed to meet the procedural requirements of the law. This view is repudiated in United States v. Finley and Ex parte Hutflis. In these cases it was held that the exemption of aliens depended upon a strict compliance with the rules and regulations governing the filing of claims for such exemptions. An alien cannot get exemption without claiming it in due form.

Conspiracy to Obstruct Conscription—Elements of the Offense. Goldman v. United States (U. S. Supreme Court, January 14, 1918, 38 Sup. Ct. 166); United States v. Galleanni (U. S. District Court, October 9, 1917, 245 Fed. 977); United States v. Bryant (U. S. District Court, September 13, 1917, 245 Fed. 682); United States v. Baker (U. S. District Court, July 11, 1917, 247 Fed. 124). In the first of these cases the Supreme Court of the United States reiterates the well established rule that the crime of conspiracy is complete even though the plans of

the conspirators are wholly unsuccessful. The fact that the defendants conspired to induce persons to evade the obligations of the conscription act brought them within the penalties of the penal code, although the government could point to no person who had been induced by their efforts thus to violate the law. United States v. Galleanni holds that soliciting and urging people not to register for the draft is punishable as a conspiracy to defraud the United States inasmuch as it was a conspiracy to deprive the government of a right to which it was entitled. In United States v. Bryant the defendants had conspired forcibly to resist the operation of the conscription act but their conspiracy and all the overt acts done in furtherance of it took place before the conscription act was passed by Congress. This was held nevertheless to be a conspiracy to offer forcible resistance to the authority of the United States. Nor does the fact that the scheme of the conspirators was "chimerical and utterly impossible of success" make it less a violation of the law. The government failed to convict the defendants in United States v. Baker because it was unable to prove definite intention on their part to persuade persons not to obey the conscription law. Such intention was not shown by a mere circulation of literature denouncing war and implying that a Socialist administration would have kept the country out of war.

Enlistment—Validity—Right of Recruit to a Fair Physical Examination.—Ex parte Blackington (U. S. District Court, October 17, 1917, 245 Fed. 801). The petitioner in this case enlisted in good faith in the national guard and was drafted into the federal service. It was shown that the army medical examiner passed him out of malice in spite of certain physical defects. This case holds that such a person has no right to demand his discharge from military service. The medical examiner acts solely for the government and is under no legal obligation to an applicant to give him a fair examination.

Enlistment of Minors—Right of Parent or Guardian to Claim Release. Ex parte Rush (U. S. District Court, November 13, 1917, 246 Fed. 172). The National Defense Act of June 3, 1916, provides that persons under eighteen years of age shall not be enlisted or mustered into the military service of the United States without the written consent of his parent or guardian provided that the parent or guardian has a legal right to his custody and control. In this case a boy of seventeen enlisted without the consent of his guardian and served for a year in the army. He

then deserted, was arrested and held for court martial. His guardian asks for writ of habeas corpus on the ground that his enlistment was illegal, and that he cannot be held in the custody of the military authorities. The petition for the writ is denied upon two grounds. In the first place it is well established that the law requiring the consent of parent or guardian to the enlistment of a minor is intended not for the benefit of the minor but for that of the parent or guardian. The minor cannot on his own behalf set up the invalidity of his enlistment. Secondly, the parent or guardian must act within a reasonable time in asserting his claim to have the minor released from military service. Such action must at all events be taken before the minor has made himself amenable to military jurisdiction by a violation of military law. Two other recent cases lay down the same rule: Ex parte Dostal, 243 Fed. 664; Ex parte Foley, 243 Fed. 470.

Espionage Act—Validity of Provisions Concerning Seditious Publications. United States v. Pierce (U. S. District Court, November 7, 1917, 245 Fed. 878); Masses Publishing Co. v. Patten (U. S. Circuit Court of Appeals, November 2, 1917, 246 Fed. 24). It is held in the case of United States v. Pierce that the provision of the espionage act making it a crime for any person willfully to "make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States" is not an unconstitutional abridgment of the freedom of speech guaranteed by the first amendment. There are well recognized limits to the freedom of speech. "Citizens have the right to criticize the existing laws, point out their defects, injustice, and unwisdom, and advocate their amendment or repeal; but they have no constitutional right to counsel, advise, encourage, and solicit resistance to the execution of or refusal to obey them."

In Masses Publishing Co. v. Patten the question is raised of the constitutionality of the clause of the espionage act excluding from the mails certain proscribed kinds of matter, such as that which advocates treason, insurrection or forcible resistance to the law. The court points out that the act in question does not forbid the publication of the matter excluded from the mails, nor its transportation in other ways than through the mails. There is no broad question of the freedom of the press raised. There is ample authority to sustain the exercise by Congress of the power to prevent the mails from being used as an agency to promote ends which it regards as dangerous or injurious.

Such exclusion violates no property right and does not, therefore, amount to a denial of due process of law. The court also holds that the decision of the postmaster general in excluding such a publication for the mails is final unless it is clearly wrong. The burden rests upon those attacking such decision to show that it is wanton, malicious or in conflict with the preponderance of evidence.

Searches and Seizures—Unreasonable—Suspicion of Espionage. United States v. Premises in Butte, Montana (U. S. District Court, October 17, 1917, 246 Fed. 185). The officers of the federal government sought search warrants to enter and search certain premises on which they believed would be found evidence that the German subject there residing had been guilty of violating the espionage act. The warrants were refused. Mere suspicion is not enough to justify the search of a person's premises. The fourth amendment to the United States Constitution protects every person from unreasonable searches and seizures and the search contemplated in this case is unreasonable in view of the failure of the federal officers to show "probable cause" that a crime had been committed. The warrants must also be refused on the ground that the proposed search would amount to making the suspected person be a witness against himself since the forcible examination of private books and papers will constitute an infringement of the protection against self-incrimination.

Sedition—Right of State to Punish Interference with the War. State v. Holm (Minnesota, January 25, 1918, 166 N. W. 181). This case upholds the validity of a statute of Minnesota making it unlawful first, to discourage enlistment in the military or naval forces of the nation or state; second, to advocate in speech or writing that "the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States." The defendants circulated pamphlets attacking the conscription act, denouncing the President and Congress, and impugning the motives which led us to enter the war. In the first place, it is unnecessary to determine whether the pamphlet directly urged men not to enlist in the national service since the natural and reasonable effect of it is to deter men from doing so. Secondly, the fact that the war power has been confided to the national government does not preclude the states from forbidding their citizens to interfere with the raising of the national armies or the conduct of the war. Such state legislation must not conflict with federal

law or hinder or impede its operation. The act in question does not so conflict with any federal law; its provisions supplementing and not interfering with the espionage act passed by Congress. The state is part of the nation and owes to the nation full support in time of war. It is proper for the state to require its citizens "to refrain from any act which will interfere with or impede the national government in effectively prosecuting the war against the public enemies." Lastly, this statute is not void by reason of its interference with the freedom of speech. There is no unrestrained freedom to say or print whatever one chooses. It is necessary that the government should forbid utterances and publications which imperil the national security or hinder the proper performance of its public duties.